Amendment to Standing Order 65.

President.—The question time is over. The next item is the further consideration of the Banker's Books Evidence Bill.

Dr. A. G. Menon.—No, Sir. There is an amendment to be moved by Mr. K. T. Mathew. In the supplementary agenda supplied to us it is stated that, after question time, Mr. K. T. Mathew will move that the draft amendment to Standing Order 65 be taken up and passed.

Mr. K. T. Mathew.—Sir, I move that the draft amendment to Standing Order 65 be taken up and passed.

Mr. A. Eachara Menon.—I second it.

The question of substituting the words "not less than 15" for "not more than 20" in Standing Order 65 was put to the vote of the House and carried.

Mr. C. A. Kunjunni Raja's Banker's Books Evidence Bill.

President.—The next item is the consideration of the Banker's Books Evidence Bill. We have obtained the consent of the Council to the motion that the Bill be taken into consideration. Now, the President has to read it clause by clause.

There is an amendment to section 3 (i) to omit all the words after "Regulation IV of 1080".

Mr. E. Ikkanda Wariar.—Sir, I beg to move that the words after "Regulation IV of 1080" be omitted. The Bill does not appear to me so innocent and harmless as it appeared to me at first sight. Of course, I am conscious that the Council has accepted the main principles of this Bill. But that is no reason why we should not pause and consider whether there is anything wrong with what is contained in this Regulation, if we are convinced that there is likely to be some real hardship to some. That is why I tabled this motion to-day. The Bill confers some privileges to a class of people—I mean the bankers. It prescribes some general rule of evidence in favour of the bankers. That necessarily implies an encroachment upon the powers and rights of some other people—that is, the general public. But I presume that this House felt the necessity of giving some relief from the inconvenience and obstruction to business caused to some of the bankers, and I also presume that, mainly from the motive of encouraging the indigenous banking concerns in Cochin, this House accepted the main principles of this Bill. Consistent with that, I request this House to adopt this amendment. My amendment purports to restrict the operation of the mischief of this Bill to the indigenous business concerns of the State.

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Since our object is mainly to encourage our banking industry, I submit that no harm would be caused by adopting this amendment. It would add to their advantage, if we exclude the foreign companies from the operation of this Bill. It is on account of this that I brought the amendment, and I commend it to the acceptance of the House.

Mr. A. Eachara Menon.—I second it.

Mr. C. A. Ouseph.—I oppose the amendment. There are at present working in Cochin several companies registered in British India and in the United Kingdom, and by their work Cochin is benefited to a great extent. In this enlightened twentieth century, it would be foolish to think that it would be possible to live in water-tight compartments. If a foreign company is doing banking business in Cochin, would it not be injurious to our own interests not to extend the same privileges as regards their books when we extend them to the indigenous banking concerns? There is absolutely no principle involved in this amendment. We cannot smother banking concerns registered elsewhere. On the other hand, the banking concerns elsewhere are on a more secure financial footing than our small banks. Take the whole of Cochin, and you will see the banks working satisfactorily are all banks registered outside. Cochin being a small State, it may not be possible for us to find sufficient capital to carry on work in a satisfactory manner as the Imperial Bank or the Bank of India. Therefore, I oppose this amendment, and I would add that it is dangerous to follow a policy of exclusion. Open your eyes and see in what all parts of India and the Malay States Cochinites have settled, taking to commerce and several other occupations. When our men have been received into several parts of the world it is not advisable to think of shutting out men who come from England, Scotland and other places to do work here. I submit it is not a wise policy.

Mr. K. Achyuta Menon.—I oppose the motion. Not on this ground. So far as the subjects of this State are concerned, it would be highly necessary in many cases to have the account books belonging to outside banks produced for evidence in the Cochin Courts. If the account books belong to banks not coming under this Bill, the court cannot compel their production, whereas, according to the present rules, the court can compel. So it not merely encourages the banking concerns in the State, but the litigants are also much benefited by this.

M. C. A. Kunjunni Raja.—Is there not a clause in the Company's Act that branches of foreign companies should be registrered here? I think it is necessary under section 277.

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Mr. V. K. Kochunni Menon.—I think they are not registered, and it is not necessary.

Mr. C. A. Kunjunni Raja.—Since there was no notice of this amendment, I was taken by surprise, and so I had no opportunity to refer to the Company's Act. I think it ought to be registered under the law. So far as British India is concerned, I can speak from personal experience. The Yogakshemam Co. Ltd., Trichur, had an idea of opening a branch in British India, and they inquired of the procedure to be adopted to start business, and my legal advice was to have it registered in British India.

President.—I remember one instance. The Manager of the Cannanore Bank who wished to open a branch here appeared before me, and he wanted exemption from the law to produce accounts.

Mr. E. Ikkanda Wariar.—They are not registered here.

Mr. T. A. Ramachandra Ayyar.—It is not being done. Limited companies having branches in the State as the Burma Oil Co., etc., are not registered here.

President.—Mr. Ramachandra Ayyar says that it is a fact.

Mr. C. A. Kunjunni Raja.—I oppose the amendment for the reason stated by the Hon'ble Member for Chalakkudi, that we do not wish to have water-tight compartments in this matter.

The amendment was put to vote and lost.

President.—Then comes the amendment to clause 3 (2) (a).

Mr. E. Ikkanda Wariar.—I do not wish to move the amendment. I withdraw it.

The following amendment was withdrawn with leave:—"To add, after 'bankers' in clause 3 (2) (a), the words 'and keeping a cash-book, a day-book or journal and ledger and publishing periodical reports of its transactions and getting its accounts audited by the Government or persons under the control of the Government.'"

President.—Then clause 3 (2) (b).

Mr. E. Ikkanda Wariar.—Sir, I beg to move to omit clause 3(2)(b). In order to explain my object, I must also deal with my amendment to clause 4, to omit the words "partnership or individual" and to substitute in its place "company". Clause 4 gives the Government the power to extend the provisions of this Regulation to private concerns. My object in tabling this

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amendment to clause 4 is,if the amendment to clause 4 is carried, there will be no necessity for this provision, viz., definition.

President.—So if that amendment is not carried, then, this will stand. I allow it.

Mr. E. Ikkanda Wariar.—Then, I move an amendment to clause 3 (8). I move that the words "principal accountant or" be deleted from sub-clause (8) to clause 3. We do not know the status of the accountant. It might happen that he might be employed to-day and removed the next day, and it is also quite possible to have a certificate signed by him. If the correctness of it be referred to the manager, he may say that he has not attested the certified copy, and the accountant has done it, and he has gone away or he has been dismissed. So the account may or may not be correct. The court is going to act upon the authority of that certified copy, and my submission is it must be certified by a very responsible officer, and every bank would certainly have a manager.

Mr. K. Achyuta Menon.—I do not know whether the objection is for "principal" or "for accountant or". Does not the word "principal" qualify both the words "accountant" and "manager"?

Mr. C. A. Ouseph.—The word "principal" is seldom associated with "manager". It goes not with "manager" but with "accountant". I do not object to the amendment.

President.—You may construe it in either way.

Mr. A. B. Salem.—In the Civil Procedure Code the words "chief officers" are used.

Mr. O. R. Chummar.—There are concerns without managers but agents. So it is better to have as substitute "responsible officers".

Mr. E. Ikkanada Wariar.—I do not think this difficulty would arise, for he must put his name and designation.

Mr. O. R. Chummar.—Suppose a paper is attested by an agent, the party may raise the objection that it is not signed by the chief manager.

Mr. K. Achyuta Menon.—It is not valid. The principal manager is the principal responsibile officer.

Mr. O. R. Chummar.—The word "manager" is to be defined then.

President.—No definition is given.

Mr. T. K. Krishna Menon.—The manager should affix his signature above his official title.

President.—That is a very important point. Are you pressing for this amendment?

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Mr. E. Ikkanda Wariar.—I persist that the words "accountant or" should be omitted, because any irresponsible man may be made accountant.

The amendment was put to vote and carried.

President.—The next amendment is to clause 4, line 3.

Mr. T. K. Krishna Menon.—If this is to be omitted, there will be no necessity for the clause.

Mr. K. Achyuta Menon.—If the amendment to clause 4 be carried, it is practically deleting clause 4. The object of the mover is to extend the power of the Government over unregistered companies.

Mr. E. Ikkanda Wariar.—I withdraw my amendment.

The amendment of Mr. Ikkanda Wariar to omit the words "partnership or individual" in line 3 of clause 4 and to substitute the word "company" in their place was withdrawn with leave.

President.—Or let it stand as it is. Suppose a change is effected in the accounts.

Rao Sahib Mr. T. V. Kasturi Ranga Ayyar.—You may withdraw your amendment to clause 3 (2) (b) also.

Mr. E. Ikkanda Wariar.—I withdraw the amendment to clause 3 (2) (b) also.

Mr. K. Achyuta Menon.—I would like to move an amendment. I do not know whether it would be proper, if power is vested to extend the provision to individuals.

President.—Suppose one person carries on banking business. Why should not his books be certified?

Mr. K. Achyuta Menon.—Even then, the books are likely to be changed. We cannot in this case accept one man's statement as satisfactory. The books will have to be produced. We cannot guarantee the books of a bank which has not been registered.

President.—Is that the point? Is the party to certify it? What is the objection? I don't catch you. Is it to take certified copies of the account books?

Mr. K. Achyuta Menon.—That will be accepted. There may be tampering in certified copies.

President.—Then, of course, it is open to the party to call for the original books.

Mr. K. Achyuta Menon.—The party has not the right under the Regulation. Anyhow, I won't stand in the way.

Mr. C. A. Kunjunni Raja.—Under clause 7 the court may order that the party is at liberty to inspect.

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Mr. K. Achyuta Menon.—That is quite different from having inspected. It is only a Government notification. The Government is sure to make enquiries where an individual puts in an application to have the provisions of the Regulation extended to him.

Mr. E. Ikkanda Wariar.—My object in bringing this amendment was this. But before dealing with that point, I submit that, unfortunately, under some misapprehension, I withdrew it. My object was only this: The Government has absolutely no control over the working of these banks. They don't submit periodical returns. Their accounts are not audited. The Government has also no power to see that they offer sufficient security to the public. The Government is not also in a position to ascertain the real solvency of these private concerns. If those concerns are registered, they are bound to send periodical returns to the Joint Stock Registrar, and the Government also will have some control over them. But as the control does not exist in the case of these partnerships and private concerns, it would be highly detrimental to the public interest to give the Government such power. The Government also will find it very difficult to exercise that power. Anybody may come and apply for exemption. Suppose a company or a private gentleman, say A, applies to the Government. The Government is put in a very delicate situation to say whether the company is solvent or not. They will send the application to their subordinate officers for report, and will, as usual, have to act according to their recommendations. Everybody knows what the nature of such reports will be. If the Government refuses, what happens to the company? The whole credit of the company goes, and thereby it loses the confidence of the public. Its business also fails when its credit is lost. It is, therefore, in the interests of the firm that the Government is not given this power.

President.—But all these arguments will apply to partnerships also.

Mr. E. Ikkanda Wariar.—In fact all private concerns are unregistered.

President.—Then, why did you withdraw your amendment?

Mr. E. Ikkanda Wariar.—Sir, as I said before, I was under some misapprehension. It was made clear to me only now, and I thank the Government Advocate for it.

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Mr. K. Achyuta Menon.—What is the necessity of clause 4, if sub-clause (2) (b) of clause 3 goes?

President.—If clause 4 goes, sub-clause (2) (b) also may go automatically. There is a plain understanding about this matter. Has the mover been able to follow? Don't you think that there is some force in what Mr. Wariar said?

Mr. C. A. Kunjunni Raja.—Yes. The argument seems to be that the Government cannot be trusted with these powers, since they may exercise the powers wrongly.

President.—The Government have no control over them.

Mr. C. A. Kunjunni Raja.—The Government should not apply the privileges conferred by this Regulation to such partnerships. Enabling powers are given to the Government under the section to extend the provisions of the Regulation. But the Government can refuse.

President.—Quite so. It is only an enabling provision.

Mr. V. K. Kochunni Menon.—Why should the Government be placed in that position?

Mr. T. K. Krishna Menon.—Exactly.

Mr. A. B. Salem.—You will have to say in which case unregistered partnership concerns or individual concerns need not come under the provisions of this section. Otherwise the Government may be open to the charge of having shown favouritism to either A or B.

President.—Better to have such charges minimised as far as possible.

Mr. A. B. Salem.—Anyway, the Government will be found fault with. And why should it be found fault with on this account?

President.—Do you sympathise with the Government?

Mr. A. B. Salem.—I certainly sympathise.

Mr. C. A. Kunjunni Raja.—There is also another aspect of it. There may be respectable merchants to whose accounts the Government may apply the provisions. For instance, soon after the Bill was published, one of the Cochin merchants wrote to me that the provisions of the Bill should be made applicable to private accounts also, and I wrote in reply that my definition was sufficiently wide, and that the Government was given powers

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to extend the privileges to private individuals. If the amendment is allowed, the Government will not be able to do so.

Mr. V. K. Kochunni Menon.—The Mattancheri merchants are allowed to give certified copies of accounts.

Mr. C. A. Kunjunni Raja.—Under which law?

President.—In some cases, the originals will have to be examined in the ordinary course of business, but, in the case of registered companies whose business is subject to scrutiny by the Government, there is the guarantee that the accounts are genuine.

Mr. A. B. Salem.—There is the other difficulty. Suppose an unscrupulous man gives a certificate to the partnership, and the certificate is there, and when the original book is called for, he says that the original book is lost. What would be done in such a case? The certificate would be an absolute evidence. It would be a dangerous policy to adopt, and the consequences will be very far-reaching. Take for instance Ramanujam's case.

President.—Suppose you move the amendment, Mr. Salem?

Mr. A. B. Salem.—I move that clauses 3 (2) (b) and 4 be deleted altogether.

President.—4 goes along with 3 (2) (b).

Mr. T. K. Krishna Menon.—It automatically goes out.

President.—I think that, if 3 (2) (b) goes, the other also goes. It is only for a formal motion we have put in this.

Mr. A. B. Salem.— If 4 goes, there is nothing to extend.

President.—Let us take the sense of the Council on that. Mr. Salem moved that clause 3 (2) (b) and clause 4 be omitted.

Mr. T. K. Krishna Menon.—I second it.

The question of omitting clauses 3 (2) (b) and 4 was put to vote and was carried.

The question that clause 3, as amended, stands as part of the Bill was put to vote and carried.

Mr. C. Achyuta Menon.—Clause 5 is renumbered as 4.

President.—Clause 6 will be renumbered as 5.

Clause 5 renumbered as clause 4 was put and passed.

The question that clause 6, to be renumbered as clause 5, stands part of the Bill was put to the vote and was carried.

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President.—Then, Mr. Ikkanda Wariar's amendment to clause 7 as it is.

Mr. E. Ikkanda Wariar.—I move that the word "shall" be used instead of "may" in two places, i. e., in lines 2 and 4.

President.—Now, this is a case open to the court.

Mr. E. Ikkanda Wariar.—If, by some chance, the court refuses to give any sanction to the party, the party aggrieved has no right of appeal or even revision. There is no provision for that. For an honest banker it will give no trouble. If he keeps correct accounts, he has nothing to be afraid of. The person authorised by the court will inspect his accounts only in the presence of his officers or has only to supply certified copies of the accounts in pursuance of the order. If the court ultimately finds that the application was made unscrupulously or vexatiously, it can award heavy cost for all the troubles which the banker was put to.

President.—Even in that case, will not the bank be put to inconvenience by taking the book to court and keeping the book for inspection?

Mr. E. Ikkanda Wariar.—This clause gives the power to the party to go and inspect the accounts of the bank in its own office.

President.—They need not be produced in court.

Mr. E. Ikkanda Wariar.—So there will be no inconvenience. Sir, we are giving special powers to these banks. They need not bring the accounts to the courts. The certified copy of a particular entry may not be sufficient for a party. He may have to examine the accounts for a long period, and the cost of taking certified copies for that period will also be costly to him. In every case, the party who wants the accounts has to make an application to the court and get the permission of the court to go and inspect the accounts. If the court is given discretion, it is quite possible that the court may not in all cases grant permission. If such a thing happens, there is no provision in this Bill giving the right of appeal upon that order of the court. So I submit that the amendment is highly necessary, considering also the fact that we are giving special privileges to the banks. They must be prepared to undertake some obligation. There should not always be privileges to one side. There must be some corresponding obligation for the special concession this Bill confers upon them.

President.—Anybody seconding the amendment?

Mr. Chakko Cheruvattur.—I second the amendment.

Mr. K. Achyuta Menon.—The court *may* do this or that. That is the legal expression. The court *may* do all these things. The court *can* refuse to do both.

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President.—But in some cases "may" is equal to "shall".

Mr. K. Achyuta Menon.—I don't stand upon that. "Shall" means "may," when it comes to "you may do this or that."

President.—What should be the suitable phraseology here?

Mr. K. Achyuta Menon.—The language as it stands is correct. "On the application of such and such a person the court may do this or that". This does not mean the court can refuse either.

Mr. C. A. Kunjunni Raja.—There is the further difficulty. Under clause 3 the discretion has to be exercised. So the other thing cannot be made obligatory. If the bank is prepared to produce the accounts, then, the other order cannot be an obligatory one, and the court has to exercise some discretion. It is also a misapprehension to say that there is no revision. The word "Judge" means a Judge of the Chief Court according to the definition in the former part of the Bill. It is a concurrent jurisdiction given to trial courts as well as to any Judge of the Chief Court. So there is revision.

Mr. A. Sankara Puduval.—I would also oppose the amendment. There is no necessity for putting the word "shall" instead of "may", and there is no reason to amend that, for would the court or the Judge, which means a Judge of the Chief Court, exercise discretion wrongly? The remedy lies with the Judge of the Chief Court.

President.—I think it is better to follow that. Anyhow, I shall take the sense of the Council.

Mr. E. Ikkanda Wariar.—Is the idea acceptable?

Mr. A. B. Salem.—The idea is not acceptable.

President.—What is stated in sub-clause (3) of clause 7 has also to be given effect to. The order is mandatory.

Mr. E. Ikkanda Wariar.—It can be made like this. He shall either order that such party "is at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceeding or order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries, &c." If the idea is acceptable, the wording can be corrected.

Mr. A. B. Salem.—I don't accept the idea itself. The court must be free to hear both sides. If a wrong order is passed, it is subject to appeal or revision.

Mr. E. Ikkanda Wariar.—There is no provision for it.

Mr. A. B. Salem.—There is a provision for the Judge. The court has to hear the reason of the other side as well. On the mere application of a party, if the court shall order a certain thing, then, there is no need of a court as it were. He gets it as a matter of right. He must satisfy the court that a piece of

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evidence is necessary, and the court must be reasonably satisfied, and there is no reason that a piece of evidence, if necessary, would be refused to the party. Whether that evidence should be had is in the discretion of the court, and it will go to the root of meeting out justice to-day. Why should a man ask for the vexatious procedure of being troubled by inspection or by taking copies? It may be a vexatious procedure. The court must be given discretion to rule out any such vexatious procedure. Therefore, I oppose the amendment altogether.

Mr. K. Achyuta Menon.—The court may call witnesses.

Mr. A. B. Salem.—It is a piece of evidence.

President.—Have you nothing to say on this contentious matter, Mr. Murray? What shall be used here, "may" or "shall"?

Mr. J. T. Murray.—The court must have some discretion. "May" is the proper word.

President.—We do not know which way to answer.

Mr. V. K. Kochunni Menon.—The object of the law will be frustrated, if the party has the power to insist on the production of the accounts in all cases.

President.—Now, I will put it to the vote of the House.

The motion for amending "may" in lines 2 and 4 into "shall" was put to the vote and lost.

Mr. T. K. Krishna Menon.—No provision is made under any circumstances for the court to order the production of the books.

Mr. C. A. Kunjunni Raja.—There is the general law under the Civil Procedure Code. There is also provision under clause 6. This also makes provision for that.

Clause 7 renumbered as clause 6 was put to vote and carried.

The question that clause 8 renumbered as 7 shall form part of the Bill was put and agreed to.

President.—Then, there is the preamble.

The motion that the preamble as it is shall form part of the Bill was put to vote and carried.

Clause 2 of the Bill was read out in Council. The motion that clause 2, as it is, shall form part of the Bill was put to vote and carried.

Mr. C. A. Kunjunni Raja.—I beg to move that the Banker's Books Evidence Bill, as amended, be taken up and passed on next Friday's meeting.

Mr. K. Sankaran Nambudiri.—I beg to second it.

The motion that the Banker's Books Evidence Bill, as amended, be taken up and passed on Friday's meeting was put to vote and adopted.

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